

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

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RE: Boston Gas Company, D.T.E. 00-74 (Fourth Annual PBR Compliance Filing)

Dear Attorneys:

On September 15, 2000, Boston Gas Company ("Boston Gas" or "Company") submitted to the Department of Telecommunications and Energy ("Department") its fourth annual performance-based regulation ("PBR") compliance filing, pursuant to the Company's PBR plan established by the Department's Orders in Boston Gas Company, D.P.U. 96-50 (Phase I) (1996) and Boston Gas Company, D.P.U. 96-50-C (1997). The filing contained rate schedules, M.D.T.E. 1158, 1160, 1162 through 1171, 1175, 1176, with an effective date of November 1, 2000.⁽¹⁾ The proposed rates are designed to increase the Company's annual base revenue by \$3,273,826, or 1.27 percent. The matter was docketed as D.T.E. 00-74.

On October 18, 2000, the Attorney General filed a motion requesting that the Department terminate or suspend the operation of the Company's PBR plan ("Motion"). On October 26, 2000, the Company filed a response to this motion ("Response").

The Attorney General argues that the Department should not allow the requested rate increase to take effect until the Department decides the matters remanded to it by the Supreme Judicial Court in Boston Gas Company v. Department of Public Utilities, SJC-07970 (August 13, 1999) (Motion at 1, 2). The Attorney General requests that the Department suspend the PBR plan in its entirety until the Department re-opens the record, conducts hearings, and issues an Order supporting its decision on the calculation of the accumulated inefficiencies factor within the price cap formula of the Company's PBR plan (*id.* at 2, 3). The Attorney General states that the accumulated inefficiencies factor is an integral part of the price cap formula and that the impact on consumers is significant (*id.* at 2).

The Company argues that the Court vacated and remanded only those portions of the Department's Orders in D.P.U. 96-50 and D.P.U. 96-50-C that address two specific issues, including the inclusion of an accumulated inefficiencies factor in the Company's price-cap formula (*id.*).⁽²⁾ The Company asserts that it developed and filed rate tariffs in compliance with the price-cap formula established by the Department in D.P.U. 96-50, as modified by the Court. Boston Gas Company, D.T.E. 99-85, at 3 (1999). The Company continues that to the extent that its calculations are accurate and reflect all legally enforceable price-cap formula components embodied in the PBR Plan, the Department's unilateral suspension or termination of

the PBR Plan would infringe upon the Company's due process rights (Response at 6). The Company concludes that the Department's discretion regarding the conduct of the remand proceedings in D.P.U. 96-50 and D.P.U. 96-50-C has no impact on the validity of the PBR plan and the Company's compliance filing in D.T.E. 00-74, which is prior to the conclusion of the remand proceedings. Accordingly, the Company requests that the Attorney General's Motion be denied.

On August 13, 1999, the Court issued an order that vacated and remanded to the Department only those portions of the Department's Orders in D.P.U. 96-50 and D.P.U. 96-50-C that address two specific issues, one of which is the inclusion of an accumulated inefficiencies factor in the Company's price-cap formula. See, e.g., Boston Gas Company v. Department of Public Utilities, SJC-07970, at 1-2; Boston Gas Company, D.T.E. 99-85, at 3. The Court's action has no effect on the remainder of the PBR plan; the remainder of the plan, including the price-cap formula, remains in effect. Boston Gas Company, D.T.E. 99-85, at 3.

The Department recognizes the importance of the consideration of an accumulated inefficiencies factor. The Department will consider the issue of whether or how the results of the remand proceeding should be applied to this compliance filing in the remand proceeding.⁽³⁾

Nevertheless, until the Department concludes the remand proceedings in D.P.U. 96-50 and D.P.U. 96-50-C, the Company has correctly declined to include any accumulated inefficiencies factor in its current compliance filing. Id.

Accordingly, the Department denies the Attorney General's motion to terminate or suspend the Company's PBR plan. Based on our review of the compliance filing, we conclude that the Company's filing complies with the requirements of its PBR plan, as modified by the Court, and approve the Company's compliance filing and tariffs M.D.T.E. 1158, 1160, 1162 through 1171, 1175, 1176, subject to the provisions of this letter, to become effective November 1, 2000.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

1. On October 25, 2000, the Company filed revised tariffs for its Residential Assistance Non-Heating Rate R-2 and Residential Assistance Heating Rate R-4 to comply with the Department's directives in Gas Unbundling, D.T.E. 98-32-E (2000). The Company's filing replaced proposed tariffs M.D.T.E. 1159 and 1161 with proposed tariffs M.D.T.E. 1175 and 1176, respectively.

2. The second portion vacated and remanded is the enlargement of the maximum contingent annual

service-quality penalty, which is not at issue in the pending motion by the Attorney General or in the Company's fourth annual compliance filing.

3. The Department has requested comments, which are due November 13, 2000.